

December 18, 2018

*VIA EMAIL*

Ms. Marquita M. Booker  
Assistant Vice President  
Office for Inclusion and Equity  
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Re: Final Investigative Report

Ms. Booker:

We have completed our investigation into the allegations made against State Senator Charles Schwertner. Our final report is contained in a zip file attached to the email transmitting this letter. Once you open the zip file, you will find the final report and the report appendices in two separate .pdf files, both of which are password protected. My office will contact you via phone to provide the password. Please contact my office if you have any difficulty opening the files.

We appreciate the opportunity to work on this matter for the University of Texas.

Sincerely,



Johnny Sutton

Cc: James E. Davis  
Krista Anderson

Enclosures

## EXECUTIVE SUMMARY

The Complainant, a University of Texas at Austin student, reported to a University official that on August 28, 2018, the Respondent, an adult male who is not a student or an employee of the University, sent her several LinkedIn messages (including one requesting her cell phone number), then sent her sexually inappropriate text messages (including a photograph of a nude male body with the face cropped out) from his cell phone number. One of the text messages said, "This is [Respondent's first name]". The Respondent's LinkedIn messages included one asking whether Complainant was receiving the texts. The inappropriate communications were unsolicited by and offensive to Complainant. Complainant ultimately responded to the text messages and LinkedIn messages, asking the sender to stop the offensive communications. She received nothing further from the Respondent's cell phone number or LinkedIn account. Subsequent forensic review of the Complainant's cell phone confirmed that she received the text messages and photograph from a cell phone number that was handwritten on the Respondent's business card and personally given to Complainant by Respondent prior to August 28, 2018.

The University retained Johnny Sutton, a former United States Attorney for the Western District of Texas and current partner in the Ashcroft Sutton Reyes law firm, to investigate this matter and determine whether Respondent violated Title IX or University policy. Though Respondent is neither a student nor an employee of the University, concerns regarding Title IX arose because Respondent first came into contact with Complainant at an event that Complainant was encouraged to attend by the University. Mr. Sutton interviewed the Complainant, who fully cooperated with the investigation. Mr. Sutton engaged a forensic investigator who was allowed to examine the Complainant's and Respondent's phones but did not have access to other devices relevant to the investigation. Mr. Sutton also repeatedly requested to interview the Respondent. Respondent refused to meet with Mr. Sutton but conveyed certain information through his attorneys. Respondent also refused to answer five written questions that were designed to bring clarity to the investigation.

Mr. Sutton's investigation revealed that the cell phone number, handwritten on Respondent's business card, was not the carrier-based cell phone number associated with Respondent's iPhone, but instead a phone number purchased through an app called Hushed. Hushed allows a user to purchase one or more private phone numbers to communicate via cell phone without revealing the user's actual cell phone number or revealing that a text or call was sent through the Hushed app. The Hushed app requires the user to log in with a username and password to be able to send a message from the private number.

Respondent's attorneys claim that a third person, known to Respondent but whom Respondent will not identify, sent the text messages and photograph via the Hushed app to the Complainant. Respondent's attorneys told investigators that Respondent shared his username and password for both his LinkedIn and Hushed accounts with this third person.

In separate communications, the attorney for an unidentified third person asserted that the third person sent the text messages and photograph at issue to the Complainant without Respondent's prior knowledge or approval. The attorney for this third person did not disclose the third person's relationship with the Respondent and did not reveal why he or she sent the offensive text messages and photograph to the Complainant. The attorney claims that this third person signed an affidavit attesting to the truth of his or her statements but refuses to disclose his or her identity.

The forensic review of the Respondent's phone provided key information. First, the review determined that Respondent appears to have shared his username and password for Hushed with a third person, because the Respondent and third person used the same Hushed account to privately communicate between themselves. Second, the review determined that an iPhone used to send a text or photograph



through the Hushed app contains a detectible electronic trace of the communication within the phone's operating software, and Respondent's phone did not have that electronic trace. Thus, the forensic investigator concludes that the text messages and photograph at issue were not sent from Respondent's iPhone. Respondent's refusal to fully cooperate prevented the investigators from determining whether Respondent had multiple devices, such as another iPhone or iPad, which could have been used to send the text messages and photograph. Moreover, the unidentified third person's cell phone was not made available for forensic review to determine whether or not it was used to send the text messages and photograph, as the third person's attorney claims.

Based on the available information, it is clear that Complainant received the uninvited and offensive text messages and photograph, and that she reasonably believed those came from Respondent. It is also clear that the text messages and photograph were not sent from Respondent's cell phone. Third, though an unidentified third person, through an attorney, claims responsibility for sending the text messages and photograph, we cannot test the truthfulness of that claim.

We recognize that it is plausible the Respondent sent the text messages and photograph from a device other than his personal cell phone and the third person claiming responsibility is being untruthful or does not exist, but we have no evidence to support those possibilities. It is also plausible that the third person who claims to have sent the text messages and photograph does exist and did in fact send them. The forensic evidence shows that a third person had the means to do so. Respondent has access to information that could allow a more definitive conclusion to this matter, but the Respondent is unwilling to share that information, and the University lacks authority to compel him to cooperate more fully.

Therefore, the available evidence does not support a finding that Respondent engaged in conduct that violates Title IX or University policy. Additionally, without more information regarding the unidentified third person and his or her connection to the University and Complainant, we cannot conclude that the third person's alleged conduct, if true, constitutes a violation of Title IX or University policy.